

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

SENDMYGIFT.COM, Inc.,
Debtor.

Bky. No. 00-35021 (GFK)
Chapter 11

SENDMYGIFT.COM, Inc.,
Plaintiff,

Adv. No. _____

v.

Daryl A. Shiber, Kimberly G. Shiber,
DHS Corporation, and K.G.S., LLC
Defendants.

**NOTICE OF MOTION
AND MOTION
FOR PARTIAL
SUMMARY JUDGMENT**

To: Plaintiff named above.

1. Plaintiff moves the Court for Partial Summary Judgment and gives notice of hearing.

2. The Court will hold a hearing on this motion at 10:30 a.m. on September 28, 2004 at Courtroom No. 228B, U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota, 55101 before the Honorable Gregory F. Kishel.

3. Pursuant to Local Rule 9006-1(b), any response to this motion must be filed and delivered not later than 10:30 a.m. on September 24, 2004, which is 3 days [excluding weekends] before the time set for the hearing, or filed and served by mail not later than September 21, 2004 , which is 7 days before the time set for the hearing. Pursuant to Local Rule 9013-2(f), UNLESS A RESPONSE IS TIMELY FILED, THE APPLICATION MAY BE GRANTED WITHOUT A HEARING.

4. The Court has jurisdiction over this application pursuant to 28 U.S.C. §157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This is a core proceeding. This adversary proceeding arises under 11 U.S.C. §542. The Debtor filed its bankruptcy petition in this case on December 2001.

5. This motion is filed under Bankruptcy Rule 7056.

Dated: September 16, 2004

Respectfully submitted,

-e- David Hoiland
David Jon Hoiland #46085
Attorney for Debtor
120 S. 6th St. #1100
Minneapolis, Minnesota 55402
(612) 573-3686

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

SENDMYGIFT.COM, Inc.,
Debtor.

Bky. No. 00-35021 (GFK)
Chapter 11

SENDMYGIFT.COM, Inc.,
Plaintiff,

Adv. No. 04-3035

v.

Daryl A. Shiber, Kimberly G. Shiber,
DHS Corporation, and K.G.S., LLC
Defendants.

**MEMORANDUM IN
SUPPORT OF MOTION
FOR PARTIAL
SUMMARY JUDGMENT**

Plaintiff moves for partial summary judgment on its \$542 turnover claims against Defendants jointly and severally, in the amount of \$53,000, under Rule 56 FRCP, made applicable here by Bankruptcy Rule 56.

RECOVERY OF THE DEBTOR'S MONIES PAID TO DEFENDANTS

It is not contested that Joseph Burnett, president of the Debtor, gave three checks to the defendants, dated 12-19-01, 1-9-02 and 2-1-02, totaling \$53,000 drawn on the Debtor's bank account. [Checks attached to Hoiland Affidavit as Exhibit A] Defendants refuse to return these funds to the Debtor.

Mr. Burnett alleges that these funds were loans to defendant Shiber to enable him to stay current or become current on defendant K.G.S., LLC's mortgage with Premier Bank. The Debtor had guaranteed this Mortgage 5-30-01, when the Debtor sold the commercial office building at 12345 Portland Avenue South, Burnsville, Minnesota to K.G.S., LLC, an entity controlled by Mr. Shiber. [See Burnett Affidavit]

Mr. Shiber's recollection of the \$53,000 payments differs from Mr. Burnett's. Mr. Shiber alleges that Mr. Burnett paid him the \$53,000 as a down payment toward purchase of one half interest in a pawn shop that his father in law owned in St. Paul.

Mr. Shiber alleges that he controlled the pawn shop, and that it was merely titled in his father in law's name. Actually, the pawn shop was incorporated as defendant DHS Corporation, and Mr. Shiber's father in law owned the stock of DHS Corporation. Mr. Shiber admits that the deal with Mr. Burnett was never consummated, that no interest in the pawn shop was ever transferred to Mr. Burnett or to the Debtor, but refuses to return the money. He confirms this in his deposition testimony as follows:

Q. [Hoiland asking] Do you recall that on this fifty-three thousand, discussing a payment plan, a repayment plan with Joe [Burnett] where you'd pay him back the fifty-three thousand over 90 days?

A. [Daryl Shiber answering] No. That was strictly a purchase.

R. Did Joe Burnett or SENDMYGIFT get any value for that money they paid you?

A. Get any value?

Q. Yes.

A. Half a pawn shop, if we ever put it together.

Q. But it hasn't been put together, right?

A. It was put together way back then. They just didn't come up with the rest of the money.

Q. What was put together?

A. The operation was there, set up, ready to go.

Q. You didn't own it at that time.

A. Oh, yeah.

Q. No, your father-in-law, you said.

A. Well, my father-in-law owned it. But it was a paper deal, and he would have just transferred it over.

Q. So what claim do you have for keeping that money? [emphasis added]

A. We had an agreement, you know, on opening up a shop.

Q. Did you spend any money to open up the shop?

A. Most of the stuff was already set up. I had the safe; I had the counters; I had the merchandise; I had equipment; I had the racks; I had the shelves.

Q. Everything was all there in December?

A. It was all ready to go.

Q. How long had it been closed?

A. Never opened.

Q. How long had you owned it?

A. I paid rent there for - - when I say, "I," you know, Kim [Shiber, my wife] paid - - actually my father-in-law paid it, but Kim had, you know, gave him the money to pay the deal - -

Q. For how long?

A. - - so he owed her the money.
Probably - - on, gosh, long time.

Q. Years?

A. I don't know. Too long.

Q. Several years.

A. No. No, it wasn't several years.

Q. When did your father-in-law get involved with that?

A. I'll have to find out. I can't remember exactly, but I can get that information for you.

Q. Probably a couple, two or three years before - -

A. Might have been two years. Maybe.

Q. So somehow Burnett paid you \$53,000, but because he hasn't finished the deal, you won't give him his money back. [emphasis added]

A. Well, he hasn't finished the deal. He had had 50 percent of the deal.

Q. He doesn't want to finish the deal. He wants his money back.

A. Well, you go buy something; you can't just get your money back. You have to either go through with it, or - -

Q. What's he got to show that he bought anything? Did you set up a corporation?

A. No, he was going to do that.

Q. He was going to do it.

A. Yes. Because it was going to be him and Tony. And those guys were the ones that were going to run it.

Q. This was a handshake deal? Did it ever make it to a - -

A. A handshake deal, yeah. I've done many of them.

Q. Not even a napkin in a restaurant.

A. Not even a napkin. Done many of them, yeah. Can't do them much anymore.

Q. You did pretty good on this one, with fifty-three thousand in your pocket.

A. Well, he'd have done real good if he'd have come up with the rest of the money. We'd all make it go.

Q. And it's all still sitting there?

A. A lot of it is, you bet.

Shiber Depo. p. 80 line 9 – p. 83 line 10.

Mr. Shiber alleges that he convinced Mr. Burnett to pay him \$53,000, as part of an allegedly negotiated price of \$75,000, for half interest in DHS Corporation, a corporation he controlled but did not own. When the deal was not completed, Mr. Shiber declined to return the money. There was no writing to confirm the terms of the

deal, making it unenforceable under the statute of frauds.

Regardless of whether plaintiff's story of the loan is true, or defendant's story of the pawn shop is true, 11 U.S.C. §542, together with §1107(a), authorizes the Debtor to recover property and monies belonging to the estate, in the hands of third persons. Under Minnesota law, plaintiff is entitled to interest at six percent per annum on the funds as well. ("The interest for any legal indebtedness shall be at the rate of \$6 upon \$100 for a year, unless a different rate is contracted for in writing." Minn. Stat. §334.01) If the checks were loans as Mr. Burnett has claimed made to benefit the debtor, §542 allows the debtor to recover the monies owed. If the checks were paid toward the partial purchase of a pawn shop, as Mr. Shiber contends, the transaction was never completed and §542 authorizes the debtor to recover the monies paid to defendants for which no value was received.

It should also be noted that extraordinary business operations of any Chapter 11 debtor require approval of the Bankruptcy Court. In this case, such approval was neither requested nor granted. In such circumstances, §542 authorizes the debtor to recover the monies paid to Mr. Shiber.

THE CHECKS – JOINT AND SEVERAL LIABILITY

Judgment should be joint and several as to Mr. and Mrs. Shiber, and DHS Corporation. Mr. Shiber directed to whom the checks should be made payable. [Burnett Aff. par. 11] His wife apparently used the DHS Corporation check to pay her own bills. [Shiber Depo. p. 74 line 20 – p. 75 line 1] Mr. Shiber appears to have directed the checks and conversion of the Debtor's checks to cash or cashiers' checks. [Shiber Depo. p. 72-77] DHS Corporation is dormant [*Id.* p. 73 – line 3]. In view of the multiple unpaid judgments against Mr. Shiber exceeding \$160,000, [Hoiland Aff. Ex. C] his practice of controlling his business interests through corporations in his wife's name [Shiber Depo. p. 6-8, p. 10 lines 13-18, p. 59-60, and Shiber Depo. Ex.2], through his father in law [*Id.* p. 81 lines 2-4 and 16-20] and Mr. Shiber's practice of diverting funds to his wife, [Shiber Depo. p. 69 lines 1-4, p. 75 and 76 especially lines 13-18, Burnett

Aff.] the Debtor will likely only be able to collect the funds from Mrs. Kimberley Shiber.

THE FIRST CHECK TO DHS CORPORATION

Mr. Shiber directed Mr. Burnett to make the first check to DHS Corporation. “Well, that was just a corporation that had loaned my father-in-law money, and that was a way to get it back into the corporation.” [Shiber Deposition p 72, lines 18-20] He testified that DHS Corporation is “laying dormant.” [Id. P 73, line 3]

Mr. Shiber testifies about what happened to the \$19,000 check paid to DHS Corporation.

Q. Do you know what happened to the money ?

A. My wife would have probably paid bills with it, or - -

Q. Her bills?

A. Well, DHS bills, or her bills, or whatever.

Shiber Depo. p. 74 line 20 – p. 75 line 1

Mr. Shiber doesn't know who cashed the first check made payable to DHS Corporation. He doesn't know who's AT&T Mastercard number was written on the front of the check to cash it. He acknowledges that his wife may have an AT&T Mastercard and that, as with the other checks, the check was not actually deposited, but traded for cashier's checks. [Shiber Depo. p 73-74] This is a common means used by debtors to keep money out of their bank accounts, and thereby thwart collection efforts by their creditors.

Mr. Shiber testified at his deposition that DHS Corporation is a corporation owned by his wife that buys and sells antiques. He used to own the corporation, and now she does. It seems that DHS Corporation is largely dormant. When asked if his wife spends 20 – 30 hours a week working with it, he answered: “No, no not really. Limited, very limited.” [Shiber Depo. p. 61 and 62] When asked if DHS Corporation does banking transactions every month, Mr. Shiber answered: “No. It's laying dormant, but there's - - it's still a corporation.” [Id. at p 73 lines 3 and 4]

THE SECOND CHECK TO MR. SHIBER

The second check was made out to Mr. Shiber. He believes he cashed it at the Debtor's bank, and took a cashier's check for it. He believes he deposited the cashier's check into one of his or his wife's corporations. [*Id.* p 76.]

THE THIRD CHECK TO MRS. SHIBER

The third check was made out to Kim Shiber. Mr. Shiber testified that Kim endorsed it on the back, and either got a cashier's check or cash for the \$15,000. [*Id.* pp. 76 and 77]

JOINT AND SEVERAL LIABILITY

For purposes of this Summary Judgment motion, we must accept Mr. Shiber's version of the facts. Accordingly, Mr. Shiber was the principal that negotiated the pawn shop deal with Mr. Burnett. Mr. Shiber directed to whom the checks should be payable. Mr. Shiber controlled the deal from his end. The first check went to DHS Corporation, the second check went to Daryl Shiber and the third check went to Kim Shiber. Mr. and Mrs. Shiber used DHS Corporation, when convenient to flow money back and forth to Mrs. Shiber's father. All three defendants were in this deal together. It was a matter of Mr. Shiber's convenience whose hands the money flowed to and through.

The Court should award the entire money judgment entered jointly and severally against Daryl Shiber, Kimberly Shiber and DHS Corporation. Mr. Shiber admits to receipt of the monies in his deposition testimony above. He has not been able to recall which accounts, if any the monies were deposited to. He testifies that he uses his wife's accounts and her corporation's accounts to run his affairs.

Plaintiff and plaintiff's counsel are very concerned about the ability to collect any judgment against defendants in this matter. Although it appears that Mr. and Mrs. Shiber own millions of dollars in assets through corporations which have been put into Mrs. Shiber's name, their actions and behavior suggests that they have taken steps to put

their assets beyond the reach of Mr. Shiber's creditors. Why not just deposit the checks to existing accounts? Why cash \$53,000 of checks or trade them for cashiers' checks? A reasonable answer is to keep the money out of Mr. Shiber's bank accounts, to prevent his judgment creditors [Hoiland Aff. Ex.4] from successfully levying against those accounts.

Plaintiff does not seek judgment against K.G.S., LLC in this motion since the alleged benefits K.G.S., LLC received from the \$53,000 payments are dependent on plaintiff's version of the facts, contested by Mr. Shiber. Summary judgment is not appropriate where there is a bona fide dispute between the parties as to the essential facts.

CONCLUSION

Under Rule 56(c), summary judgment is appropriate when the evidence, viewed in the light most favorable to the nonmoving party, reveals no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Celotex Corp. V. Catrett*, 477 U.S. 317, 322-23, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986)

In re May, 251 B.R. 714 (8th Cir. BAP 2000)

Even relying completely on Mr. Shiber's pawn shop version of the events, 11 U.S.C. §542 requires defendants to turn over to plaintiff the \$53,000, plus statutory interest, at the rate of 6% per annum from March 1, 2002 to Plaintiff. Mr. Shiber clearly controlled who the money went to, and directed a substantial portion to his wife. Mrs. Shiber appears to run the corporations on paper, while Mr. Shiber actually directs the operations, and Mrs. Shiber appears to use the corporate funds as her own personal funds. Judgment in this case is appropriate against Mr. Shiber, Mrs. Shiber and DHS Corporation, jointly and severally.

Dated: September 16, 2004

Respectfully submitted,

-e- David Hoiland

David Jon Hoiland #46085

Attorney for Debtor

120 S. 6th St. #1100

Minneapolis, Minnesota 55402

(612) 573-3686

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

SENDMYGIFT.COM, Inc.,
Debtor.

Bky. No. 00-35021 (GFK)
Chapter 11

SENDMYGIFT.COM, Inc.,
Plaintiff,
v.

Adv. No. 04-3035

Daryl A. Shiber, Kimberly G. Shiber,
DHS Corporation, and K.G.S., LLC
Defendants.

AFFIDAVIT OF
DAVID HOILAND IN
SUPPORT OF MOTION
FOR PARTIAL
SUMMARY JUDGMENT

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

David J. Hoiland, being on oath duly sworn, deposes and says:

1. I am the attorney for the above-named Plaintiff in the above-captioned matter, and I am familiar with the matters herein stated.

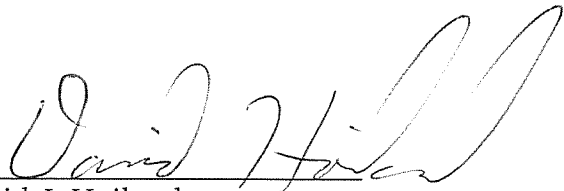
2. Attached hereto as Exhibit A are copies of the three checks that are the subject matter of this proceeding.

3. Attached hereto as Exhibit B are true and correct excerpts of the deposition of Daryl Shiber dated June 22, 2004, together with Exhibit 2 from that deposition.

4. Attached hereto as Exhibit C are computer printouts from Hennepin County District Court showing six unsatisfied or partially satisfied judgments against defendant Daryl Shiber totaling more than \$160,000.00.

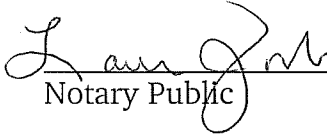
5. Attached hereto as Exhibit D is a computer printout from Hennepin County District Court showing two unsatisfied judgments against defendant Kimberly Shiber totaling \$1,600.47.

FURTHER YOUR AFFIANT SAYETH NOT.

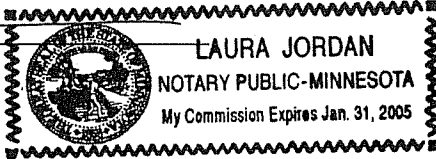


David J. Hoiland

Subscribed and sworn to before me
this 16 day of September, 2004



Notary Public



1 UNITED STATES BANKRUPTCY COURT

2 DISTRICT OF MINNESOTA

3 -----
4 In re:5 SENDMYGIFT.COM, Inc.,
6 -----

7 SENDMYGIFT.COM, Inc.,

8 Plaintiff,

Bky. No. 00-35021(GFK)

9 vs.

Chapter 11

Adv. No. 4-3035

10 Daryl A. Shiber, Kimberly G. Shiber,
11 DHS Corporation, and K.G.S, LLC,12 Defendants.
13 -----14
15
16 DEPOSITION OF

17 DARYL SHIBER

18 June 22, 2004

19 2:20 p.m.
20
21
22

23 Reported by:

24 Mary J. Aldorfer
25RAY J. LERSCHEN & ASSOCIATES
324 Plymouth Building
Minneapolis, MN 55402
(612) 341-2122

Ex. B

- 1 Q. Did you own that business?
- 2 A. Yes, I did.
- 3 Q. What was it called?
- 4 A. Now, you asked me about memory loss. Now I got to
5 think here. Goes back -- Commercial Lighting.
- 6 Q. Okay.
- 7 A. That goes back. That was in my early twenties.
- 8 Q. Okay. Let's start from the current and go
9 backwards. Are you working now?
- 10 A. Yes, I am.
- 11 Q. What do you do now?
- 12 A. I really assist my wife on different land
13 acquisitions and property deals.
- 14 Q. Is that commercial properties?
- 15 A. Both, commercial, residential.
- 16 Q. So apartment buildings?
- 17 A. Not -- no, not particularly, not at this time.
- 18 Q. Single-family housing?
- 19 A. Yeah, single -- town homes, some commercial stuff.
20 When I say, "commercial," I really assist my wife
21 and help her get land ready for a developer to
22 develop.
- 23 Q. Is she active in the day-to-day running of those
24 operations?
- 25 A. Yeah. She's trying to keep pretty active in it,

1 yes.

2 Q. Does she deal with the developers?

3 A. I actually deal with the developers, and those type
4 of situations. But she has -- we talk about it in
5 the evenings a lot. And she kind of makes the
6 determination which way to go.

7 Because, you know, my life expectancy is not
8 near as long as hers.

9 Q. How old is she?

10 A. She's 32.

11 Q. Do you have any children?

12 A. Yes.

13 Q. How many kids do you have?

14 A. Five total.

15 Q. How many do you have with Kimberly?

16 A. Two.

17 Q. How old are they?

18 A. Eleven and six.

19 Q. Does she work out of the house then?

20 A. No, she works really in-house, a lot of the
21 paperwork, and a lot of that type of stuff.

22 Q. Does she pay the bills?

23 A. Yes, she does.

24 Q. Signs the checks?

25 A. Yes, she does.

- 1 Q. Are you receiving a paycheck from anyone?
- 2 A. Not really. I do sell some diamonds, though not
3 very much anymore. But that is kind of a sideline
4 business that I've had throughout the years.
- 5 Q. So let's go back now. The last time you were more
6 active in a business, what would that have been?
- 7 A. That would have been the pawn shop business.
- 8 Q. How many pawn shops were you involved with?
- 9 A. Six.
- 10 Q. What was the name of that?
- 11 A. National Pawn Brokers.
- 12 Q. Is that in Minneapolis and St. Paul?
- 13 A. It was St. Paul, West St. Paul, St. Louis Park,
14 Bloomington, Shakopee.
- 15 Q. About what period of time were you involved with
16 those pawn shops?
- 17 A. I think probably from 1988 to, I think, 1996 or '7,
18 '8, maybe.
- 19 Q. Did you own the pawn shops?
- 20 A. Yes, I did.
- 21 Q. Prior to that, would it be fair to say most of your
22 employment was self-employed, owning different
23 businesses?
- 24 A. Yes. Most all my life self-employed.
- 25 Q. Okay. How did you find out about the building on

1 in the last day of the time frame in order to put
2 the bid in, whatever date that would have been.

3 Q. Okay.

4 A. Actually I didn't even see it until then. It was
5 like the very last day that you could put the bid
6 in on buying the building.

7 Q. One of the documents you handed me was a purchase
8 agreement.

9 I asked you to hand me some documents today,
10 deliver some documents as part of my notice of
11 taking your deposition. Do you recall that?

12 A. Yes.

13 Q. Okay. You handed me a package. And one of the
14 documents was a commercial industrial purchase
15 agreement. And that's dated April 9, 2001. And
16 who is that signed by?

17 A. That's -- I signed it for my wife, as a Power of
18 Attorney.

19 Q. Okay. April 9th, okay. You also handed me a
20 document.

21 MR. HOILAND: Why don't we mark this.

22 (Shiber Deposition Exhibit No. 1 marked
23 for identification.)

24 BY MR. HOILAND:

25 Q. We've marked it Exhibit 1. What's the date on that

- 1 A. That's correct.
- 2 Q. That was you and Mr. McGowen?
- 3 A. No.
- 4 Q. Or that was your wife and Mr. McGowen?
- 5 A. No. Not at that time, it was not.
- 6 Q. Who was that?
- 7 A. That bought the building originally?
- 8 Q. Yeah.
- 9 A. I think it was myself and John Cameron.
- 10 Q. Okay. And then K.G.S. sold it to somebody?
- 11 A. K.G.S., yes, sold it to 12345 Portland building.
- 12 Q. And does 12345 Portland still own it?
- 13 A. Yes.
- 14 Q. Are you an owner of that company?
- 15 A. No, I am not.
- 16 Q. Is your wife an owner of that company then?
- 17 A. She's a part owner.
- 18 Q. McGowen an owner of that company?
- 19 A. Yes.
- 20 Q. Are you saying that McGowen wasn't an owner in the
- 21 building of K.G.S. when you purchased the building?
- 22 A. No, I don't think so. I can't remember -- I don't
- 23 think he was, though.
- 24 Q. You remember he had to sign the guaranty.
- 25 A. Not at the -- well, I had borrowed money from him.

1 That's --

2 Q. No, I mean with Premier Bank. And he also was a
3 party of that --

4 A. Maybe he did. He probably guaranteed it for me.

5 Q. And he also was on the assumption agreement. I'm
6 just showing you this to refresh your recollection.

7 A. Yes. Yes, I want to do that.

8 MR. CAMERON: Can I just comment on
9 this?

10 MR. HOILAND: Yes.

11 MR. CAMERON: I think Daryl, his memory
12 isn't serving him well. K.G.S. is his wife's
13 company. K.G.S. was the purchaser. McGowen was a
14 guarantor initially.

15 THE WITNESS: Guarantor, yes.

16 MR. CAMERON: And when things were
17 refinanced, McGowen -- they formed a new LLC that
18 McGowen and Kimberly Shiber were the members of.
19 That entity borrowed the money; closed on the
20 property.

21 So the title went K.G.S., LLC, of which
22 Kimberly Shiber's a hundred percent owner. When it
23 got refinanced, it got deeded over to 12345
24 Portland, of which McGowen and Kimberly Shiber were
25 the owners.

1 So I know Daryl had mentioned that I
2 had an ownership interest in there at that time,
3 and that's not accurate.

4 MR. HOILAND: What I recall is that you
5 were maybe going to be in it, and then it turned
6 out, you didn't be in it.

7 MR. CAMERON: That's correct.

8 BY MR. HOILAND:

9 Q. Now, who's DHS Corporation?

10 A. That is a corporation that is owned by my wife.

11 Q. What are their activities?

12 A. They do antiques and that type of merchandise.

13 Q. Buy and sell?

14 A. Yes.

15 Q. Did they have anything to do with that Portland
16 Avenue property?

17 A. They own the antiques and such that's in there.

18 Q. They store some stuff there?

19 A. Yes.

20 Q. Those are your initials?

21 A. Pardon me?

22 Q. Is that corporation --

23 A. Yes, it is.

24 Q. -- named after you?

25 A. Yeah. I had it originally. She ended up getting

1 it. It was just a corporation that I used my
2 initials to do for her.

3 Q. Now, is Kimberly actively involved in the buying
4 and selling the --

5 A. She's actually more actively involving in buying
6 the antiques than I mean. Because she's smarter at
7 antiques than I am.

8 Q. Is that something she does 20 hours a week, or 30
9 hours a week?

10 A. No, no, not really. Limited, very limited.

11 Q. Does DHS have any interest in pawn shops?

12 A. No.

13 Q. Is it storing anything at pawn shops?

14 A. Well, DHS is a -- there was a company called Tenth
15 Street Pawn, Inc., which was my father-in-law's
16 deal. And DHS, you know, had money, you know --

17 Q. DHS helped finance that?

18 A. Yes.

19 Q. Did Tenth Street Pawn, Inc., ever operate a retail
20 pawn shop?

21 A. No. Had a license, but never did -- never did open
22 it.

23 Q. Did it ever own any merchandise, pawn merchandise?

24 A. Yes, they did, they owned merchandise.

25 Q. Are the lights back on down at Portland now?

1 A. The inventory was from Tenth Street Pawn, which my
2 father-in-law had owed me some money -- when I say
3 "me," owed my wife some money. And so he was okay
4 in the deal, and doing it like that.

5 I'm older than my wife, quite a bit.

6 Q. Was your father-in-law going to be a partner?

7 A. No. It was going to be -- well, we had talked
8 about either my father-in-law, or Kim, my wife.

9 Q. Where were you going to run the pawn shop?

10 A. St. Paul on Tenth and Robert.

11 Q. Did you have an idea when you were going to open
12 it?

13 A. As soon as it got paid.

14 Q. As soon as you got paid how much?

15 A. Seventy-five thousand.

16 Q. So why did he make the check for \$19,000?

17 A. Because he didn't want to pull any more money, or
18 whatever. That was the agreement that we had.

19 Q. What was the agreement?

20 A. That he would pay either monthly payments, or, you
21 know -- or whatever, to get to seventy-five
22 thousand.

23 Q. Monthly payments, or whatever?

24 A. Well, whatever it got to seventy-five thousand,
25 that's when it took place. Supposed to be nineteen

1 of the corporation.

2 A. I think I could be a member. But was I interested
3 in running one? No.

4 Q. And the city would have given a license to the
5 corporation with you as a member.

6 A. As a member of the deal? Probably.

7 Q. Anything happen to that pawn shop since that time?

8 A. Never opened.

9 Q. It's just been sitting there, closed?

10 A. That's correct.

11 Q. Inventory still there?

12 A. Still available, yes.

13 Q. Not there anymore?

14 A. Not there anymore, no. Took too much to keep
15 paying the rent, so -- nobody else stepped up, so I
16 let her go.

17 Q. Why was that check written out to DHS Corporation?

18 A. Well, that was just a corporation that had loaned
19 my father-in-law money, and that was a way to get
20 it back into the corporation.

21 Q. Does the corporation have any assets, DHS?

22 A. Yes.

23 Q. It's not just a shell?

24 A. No.

25 Q. Does it have a bank account?

- 1 A. Yes.
- 2 Q. And they do transactions every month?
- 3 A. No. It's laying dormant, but there's -- it's still
- 4 a corporation.
- 5 Q. Do you know whose AT&T Mastercard number that is on
- 6 the top of the check?
- 7 A. Who's that now?
- 8 Q. The handwriting on the top?
- 9 A. Where do you see that at?
- 10 Q. AT&T Mastercard account number.
- 11 A. I have no idea.
- 12 Q. That's not yours?
- 13 A. No.
- 14 Q. Do you know who cashed that check?
- 15 A. I don't think it's mine.
- 16 Q. I'm sorry, let me go back. Do you have an AT&T
- 17 Mastercard?
- 18 A. No, I don't.
- 19 Q. Does your wife?
- 20 A. She may have. You know, I --
- 21 Q. Do you know who cashed that check?
- 22 A. I don't know. I can't remember. I don't know who
- 23 cashed that. Let me see. What's it say on the
- 24 back here?
- 25 Q. I don't see any signature on the back, do you?

1 A. Yeah, I don't, either. I don't know.

2 Q. Do you know where --

3 A. It might have been a cashier's check or something,
4 you know, that got traded.

5 I'm guessing. I'm just guessing now. I don't
6 know.

7 Q. Do you know what bank DHS does business with?

8 A. Right now?

9 Q. Yeah.

10 A. Inter-bank.

11 Q. Inter?

12 A. Yes.

13 Q. Is that a Minnesota bank?

14 A. Yes.

15 Q. Is it likely that that check was cashed at
16 Inter-Bank?

17 A. I don't think so.

18 Q. Do you know what happened --

19 A. I'll find out. I want to know myself now.

20 Q. Do you know what happened to the money?

21 A. Probably just paid bills with it, or, you know --

22 Q. Who paid bills?

23 A. My wife would have probably paid bills with it,
24 or --

25 Q. Her bills?

- 1 A. Well, DHS bills, or her bills, or whatever.
- 2 Q. Mr. Burnett recalls that he handed that check to
- 3 Doug Bell.
- 4 A. Okay. That's probably right.
- 5 Q. Does that make sense?
- 6 A. Yes.
- 7 Q. And what would Doug Bell do with it, would he cash
- 8 it?
- 9 A. He wouldn't cash it. He would --
- 10 Q. Would he give it to you or Kimberly?
- 11 A. I don't know what -- I'll find out. I'm kind of
- 12 interested myself. I'll find out.
- 13 Q. Does Doug do errands for you?
- 14 A. Yes, he does.
- 15 Q. So that wouldn't be unusual, that he'd pick up a
- 16 check?
- 17 A. No.
- 18 Q. Okay. Well, let's look at check number two, on the
- 19 second page of that exhibit.
- 20 A. Yes.
- 21 Q. Now, that one looks like -- is that signed by you
- 22 on the back there?
- 23 A. Yes, it is.
- 24 Q. Is that your fingerprint on the check?
- 25 A. Yes, it is. I would assume it is.

- 1 Q. You took cash for that check then?
- 2 A. I probably took a cashier's check.
- 3 Q. They fingerprint you when you run a cashier's
- 4 check?
- 5 A. Yes, they do, if you don't have an account there.
- 6 I don't even know what bank it is. I'm trying to
- 7 see what bank it is.
- 8 Q. Looks to me that it was cashed at Wells Fargo, but
- 9 I'm not sure.
- 10 A. Yeah, I think it's Wells Fargo. I think it was a
- 11 cashier's check exchange. I think. I'm pretty
- 12 sure.
- 13 Q. And then what happened to the cashier's check?
- 14 A. Probably went into --
- 15 Q. One of your corporations?
- 16 A. I would say so, yes.
- 17 Q. Maybe one of your wife's corporations?
- 18 A. Yes.
- 19 Q. Well, let's look at the third check.
- 20 A. Yes.
- 21 Q. That's made out to Kim Shiber?
- 22 A. Yes.
- 23 Q. March 1st?
- 24 A. Yes.
- 25 Q. Is that her signature on the back?

- 1 A. Yes, it is.
- 2 Q. Does she have a Discover account, Discover card?
- 3 A. I assume she does. I assume she does. I assume
- 4 so.
- 5 Q. She took the cash, and that's as much as you know
- 6 about it.
- 7 A. Right today. I have to pull my checking account,
- 8 or her checking account and see what's -- but,
- 9 yeah.
- 10 Q. Does it look like she got a cashier's check, too,
- 11 from the amount on that check?
- 12 A. I would assume so.
- 13 Q. So are you telling me that these three checks had
- 14 nothing to do with your payments owing at Premier
- 15 Bank --
- 16 A. Oh, not at all. Numbers wouldn't be the same, for
- 17 one thing.
- 18 Q. Do you know about how much the monthly payment was
- 19 on that mortgage?
- 20 A. I don't, but I know they would probably be the
- 21 same. And one's a \$15,000 one.
- 22 Q. I'm sorry. I didn't catch that.
- 23 A. I know whatever the number was -- and I can't
- 24 remember the number -- it would probably be all the
- 25 same, and not different, you know, the -- but none

- 1 -- I can tell you this, none of that funds paid any
2 accounts.
- 3 Q. Do you remember that the payment was about nineteen
4 thousand, or you just have no memory?
- 5 A. I just don't remember. But I can tell you none of
6 it went to pay any payments.
- 7 Q. Do you remember having meetings with Mr. Burnett,
8 when he was trying to get that Premier Bank loan
9 paid off?
- 10 A. Yeah, I think I recall having a meeting with him
11 that he'd like to get that paid off. More than one
12 meeting; a couple meetings.
- 13 Q. Maybe a couple?
- 14 A. Yes.
- 15 Q. Maybe ten meetings?
- 16 A. No, not that many, but probably a couple. You
17 know, trying to get that paid off.
- 18 Q. Where would you usually meet?
- 19 A. Oh, gosh. I think we met one time at Steak and
20 Ale.
- 21 Q. Did you have an office in a restaurant across from
22 the Richfield Bank for a while?
- 23 A. Champp's.
- 24 Q. Pardon?
- 25 A. Champp's.

1 Q. Do you recall that he offered to sell you those
2 desk tops and office equipment sometime in the
3 three to six months after the closing?

4 A. I don't recall that, no.

5 Q. Do you recall that he wanted too much money for
6 what you were willing to pay?

7 A. Maybe that's why I don't recall it. You know, I
8 don't know. I don't know.

9 Q. Do you recall that on this fifty-three thousand,
10 discussing a payment plan, a repayment plan with
11 Joe where you'd pay him back the fifty-three
12 thousand over 90 days?

13 A. No. That was strictly a purchase.

14 Q. Did Joe Burnett or SENDMYGIFT get any value for
15 that money they paid you?

16 A. Get any value?

17 Q. Yes.

18 A. Half of a pawn shop, if we ever put it together.

19 Q. But it hasn't been put together, right?

20 A. It was put together way back then. They just
21 didn't come up with the rest of the money.

22 Q. What was put together?

23 A. The operation was there, set up, ready to go.

24 Q. You didn't own it at that time.

25 A. Oh, yeah.

1 Q. No, your father-in-law, you said.

2 A. Well, my father-in-law owned it. But it was a
3 paper deal, and he would have just transferred it
4 over.

5 Q. So what claim do you have for keeping that money?

6 A. We had an agreement, you know, on opening up a
7 shop.

8 Q. Did you spend any money to open up the shop?

9 A. Most of the stuff was already set up. I had the
10 safe; I had the counters; I had the merchandise; I
11 had equipment; I had the racks; I had the shelves.

12 Q. Everything was all there in December?

13 A. It was all ready to go.

14 Q. How long had it been closed?

15 A. Never opened.

16 Q. How long had you owned it?

17 A. I paid rent there for -- when I say, "I," you know,
18 Kim paid -- actually my father-in-law paid it, but
19 Kim had, you know, gave him the money to pay the
20 deal --

21 Q. For how long?

22 A. -- so he owed her the money.

23 Probably -- oh, gosh, long time.

24 Q. Years?

25 A. I don't know. Too long.

- 1 Q. Several years.
- 2 A. No. No, it wasn't several years.
- 3 Q. When did your father-in-law get involved with that?
- 4 A. I'll have to find out. I can't remember exactly,
- 5 but I can get that information for you.
- 6 Q. Probably a couple, two or three years before --
- 7 A. Might have been two years. Maybe.
- 8 Q. So somehow Burnett paid you \$53,000, but because he
- 9 hasn't finished the deal, you won't give him his
- 10 money back.
- 11 A. Well, he hasn't finished the deal. He had had
- 12 50 percent of the deal.
- 13 Q. He doesn't want to finish the deal. He wants his
- 14 money back.
- 15 A. Well, you go buy something; you can't just get your
- 16 money back. You have to either go through with it,
- 17 or --
- 18 Q. What's he got to show that he bought anything? Did
- 19 you set up a corporation?
- 20 A. No, he was going to do that.
- 21 Q. He was going to do it.
- 22 A. Yes. Because it was going to be him and Tony. And
- 23 those guys were the ones that were going to run it.
- 24 Q. This was a handshake deal? Did it ever make it to
- 25 a --

- 1 A. A handshake deal, yeah. I've done many of them.
- 2 Q. Not even a napkin in a restaurant.
- 3 A. Not even a napkin. Done many of them, yeah. Can't
- 4 do them much anymore.
- 5 Q. You did pretty good on this one, with fifty-three
- 6 thousand in your pocket.
- 7 A. Well, he'd have done real good if he'd have come up
- 8 with the rest of the money. We'd all make it go.
- 9 Q. And it's all still sitting there?
- 10 A. A lot of it is, you bet.
- 11 Q. You never told Mr. Burnett you were going to use
- 12 the money to bring your account current at Premier
- 13 Bank?
- 14 A. Never.
- 15 Q. Okay. Let's shift subjects here. I'm going to
- 16 hand you what's been marked Shiber Exhibit No. 15.
- 17 This is a letter that looks like -- is that your
- 18 signature there?
- 19 A. Yes, it is.
- 20 Q. Is that Doug Bell's signature?
- 21 A. Yes, it is.
- 22 Q. August 20, 2002?
- 23 A. Yes.
- 24 Q. Do you remember seeing this agreement?
- 25 A. Yes, I do. Yes.

COMMERCIAL-INDUSTRIAL
PURCHASE AGREEMENT

This form approved by the Minnesota Association of
REALTORS®, which disclaims any liability arising
out of use or misuse of this form.

Date: April 9, 2001

RECEIVED OF KGS - LLC or Assignor
the sum of Ten Thousand & No/100 - (\$ 10,000) DOLLARS
Check plus \$90,000 - 7 days from Acceptance as earnest money and in part payment for the purchase of property
at 12345 Portland Ave. So Burnsville, MN situated in the
County of Dakota, State of Minnesota, and legally described as follows:
P10 # 021539601001

together with the following personal property: Phone System - Entry Clock - All
Maintenance Equipment on Site

all of which property the undersigned has this day sold to the Buyer for the sum of: Two Million Four Hundred
Thousand & No/100 (\$2,400,000 -) DOLLARS, which the Buyer agrees to pay in the following manner:
Earnest money herein paid \$ 100,000 - and \$ 500,000 -, cash, on May 31, 2001, the date of
closing and the balance of \$ 1,800,000 - by financing as shown on the attached addendum. OR Before

1. **DEED/MARKETABLE TITLE:** Subject to performance by the Buyer, the Seller agrees to execute and deliver a _____
Warranty Deed conveying marketable title to said premises subject only to the following exceptions:
(a) Building and zoning laws, ordinances, State and Federal regulations. (b) Restrictions relating to use or improvement of the premises without
effective forfeiture provision. (c) Reservation of any minerals or mineral rights to the State of Minnesota. (d) Utility and drainage easements
which do not interfere with present improvements. (e) Rights of tenants as follows: See option for
1) Send My Gift-Com to lease back space As Agreed
2) Addition option for Portland Building Acquisition LLC to
lease space
2. **REAL ESTATE TAXES.** Real estate taxes due and payable in the year of closing shall be prorated between Seller and Buyer on a calendar
year basis to the actual date of closing unless otherwise provided in this Agreement. Real estate taxes payable in the years prior to closing shall
be paid by Seller. Real estate taxes payable in the years subsequent to closing shall be paid by Buyer.
3. **SPECIAL ASSESSMENTS.** [Strike out one.] BUYER AND SELLER SHALL PRORATE AS OF THE DATE OF CLOSING SELLER
SHALL PAY on the date of closing all installments of special assessments certified for payment with the real estate taxes due and payable in
the year of closing.
[Strike out one.] BUYER SHALL ASSUME SELLER SHALL PAY ON DATE OF CLOSING all other special assessments levied as of
the date of this Agreement.
[Strike out one.] BUYER SHALL ASSUME SELLER SHALL PROVIDE FOR PAYMENT OF special assessments pending as of the
date of this Agreement for improvements that have been ordered by the City Council or other governmental assessing authorities. (Seller's
provision for payment shall be by payment into escrow of 1½ times the estimated amount of the assessments.)
If a special assessment becomes pending after the date of this Agreement and before the date of closing, Buyer may, at Buyer's option: (a)
Assume payment of the pending special assessment without adjustment to the purchase price; or (b) Require Seller to pay the pending special
assessment (or escrow for payment of same a sum equal to 1½ times the projected pending assessment) and Buyer shall pay a commensurate
increase in the purchase price of the property, which increase shall be the same as the estimated amount of the assessment; or (c) Declare this
Agreement null and void by notice to Seller, and earnest money shall be refunded to Buyer.
Seller shall pay on date of closing any deferred real estate taxes or special assessments payment of which is required as a result of the closing
of this sale.
4. **PRORATIONS.** All items customarily prorated and adjusted in connection with the closing of the sale of the property herein including but
not limited to rents, operating expenses, interest on any debt assumed by Buyer, shall be prorated as of the date of closing. It shall be assumed
that the Buyer will own the property for the entire date of the closing.
DAMAGES TO REAL PROPERTY. If there is any loss or damage to the property between the date hereof and the date of closing, for any
reason, the risk of loss shall be on the Seller. If the property is destroyed or substantially damaged before the closing, this Purchase Agreement
shall become null and void, at Buyer's option. Buyer shall have the right to terminate this Purchase Agreement within 30 days after Seller notifies
Buyer of such damage. Upon said termination, the earnest money shall be refunded to Buyer and Buyer and Seller agree to sign a cancellation
of Purchase Agreement.

Shiber DEPOSITION
EXHIBIT 2 B.A.A.

COMMERCIAL-INDUSTRIAL
PURCHASE AGREEMENT

Address
Page 2

12345 Port and Ave S

6. **EXAMINATION OF TITLE.** Within a reasonable time after acceptance of this Agreement, Seller shall furnish Buyer with an Abstract of Title or a Registered Property Abstract certified to date including proper searches covering bankruptcies and State and Federal judgments, liens, and levied and pending special assessments. Buyer shall have 10 business days after receipt of the Abstract of Title or Registered Property Abstract either to have Buyer's attorney examine the title and provide Seller with written objections or, at Buyer's own expense, to make an application for a title insurance policy and notify Seller of the application. Buyer shall have 10 business days after receipt of the commitment for title insurance to provide Seller with a copy of the commitment and written objections. Buyer shall be deemed to have waived any title objections not made within the applicable 10 day period set forth above, except that this shall not operate as a waiver of Seller's covenant to deliver a Warranty Deed, unless a Warranty Deed is not specified above. If any objection is so made, Seller shall have 10 business days from receipt of Buyer's written title objections to notify Buyer of Seller's intention to make title marketable within 120 days from Seller's receipt of such written objection. If notice is given, payments hereunder required shall be postponed pending correction of title, but upon correction of title and within 10 days after written notice to Buyer the parties shall perform this Purchase Agreement according to its terms. If no such notice is given or if notice is given but title is not corrected within the time provided for, this Purchase Agreement shall be null and void, at option of Buyer; neither party shall be liable for damages hereunder to the other and earnest money shall be refunded to Buyer. Buyer and Seller agree to sign cancellation of Purchase Agreement. If title to the property be found marketable or be so made within said time, and Buyer shall default in any of the agreements and continue in default for a period of 10 days, then and in that case the Seller may terminate this contract and on such termination all the payments made upon this contract shall be retained by Seller as liquidated damages, time being of the essence. This provision shall not deprive either party of the right to enforce the specific performance of this contract provided this contract has not been terminated and provided action to enforce such specific performance shall be commenced within 12 months after such right of action shall arise.
7. **POSSESSION.** Seller shall deliver possession of the property on the date of closing.
8. **REPRESENTATIONS AND WARRANTIES.** See attached addendum.
9. **TIME IS OF THE ESSENCE FOR ALL PROVISIONS OF THIS CONTRACT.**
10. **WELL DISCLOSURE STATEMENT.** Buyer has received the well disclosure statement required by Minnesota Statutes Sec. 103I.23
- BUYER AND SELLER INITIAL: Buyer(s) N/A Seller(s) N/A
11. **ADDENDA.** Attached are (number) 3 addenda which are made a part of this Agreement.
12. **MISCELLANEOUS PROVISIONS.**
- (a) **Survival.** All of the warranties, representations, and covenants of this Agreement shall survive and be enforceable after the closing.
- (b) **Entire Agreement; Modification.** This Agreement constitutes the complete agreement between the parties and supercedes any prior oral or written agreements between the parties regarding the property. There are no verbal agreements that change this Agreement and no waiver of any of its terms will be effective unless in a writing executed by the parties.
- (c) **Successors and Assigns.** If this Agreement is assigned, all provisions of this Agreement shall be binding on successors and assigns.
13. **ACCEPTANCE DEADLINE.** This offer to purchase, unless accepted sooner, shall be null and void at 11:59 P.M. _____

_____, and in such event all earnest money shall be refunded to Buyer.
Subject To Acceptance of Gregory F. Kriskel US Bankruptcy Tr.

NOTICE

CAL LAGO
(Agent)

CB Buenet
(Company Name)

Represents Seller

(Agent)

(Company Name)

Represents _____

THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, SEEK COMPETENT ADVICE.

Dated: 4/16/01

Dated: 4-9-2001

SELLER Joseph A Buenet Pres.

BUYER Gregory F Kriskel POX

SELLER _____

BUYER _____

SELLING AGENT CAL LAGO

AMENDMENT TO PURCHASE AGREEMENT

Buyer shall have until April 17, 2001 to review, inspect, investigate and test at Buyers sole cost and expense the condition of any buildings, land, structure or improvement located at the Property including all structural components of such improvements, and all mechanical, electrical, heating, air conditioning, drainage, sewer, roofing, water and plumbing systems located therein, and to inspect the buildings and structures for any hazardous waste stored therein. Buyer shall hold Seller and the property harmless from all costs and liabilities relating to the inspection and testing.

If, as a result of such investigations and testing, Buyer determines that the buildings, land, structures, improvements or mechanical, electrical, other internal systems and asbestos are not in proper working order, or that hazardous substances are in or under the property or improvements located thereon as evidence by a written report prepared by an environmental expert, then, in any such events Buyer shall have the right to give such notice to Seller that it wishes to terminate this agreement and upon such notice being given this agreement shall be null and void and all earnest money shall be promptly refunded. Provided, however, that seller shall have the right upon receipt of notice from Buyer to cure the defect noted by Buyer within 60 days from receipt of notice from Buyer. If seller gives Buyer notice of its intent to cure within 10 days of notice to terminate from the Buyer, this agreement shall not be terminated.

To the best of Seller's knowledge, the property is free of Hazardous Substances as hereinafter defined and is not subject to any "Super Fund" type liens or claims by governmental regulatory agencies or other third parties arising from the release or threatened release of Hazardous Substances in, on or about the Property. Seller has not used the Property in connection with the generation, disposal, storage, treatment or transportation of Hazardous Substances. To the best of Seller's knowledge, there are no aboveground or underground storage tanks located in or about the Property, nor have any such tanks been located under, in or about the Property that have been subsequently removed or filled except as otherwise set forth herein. To the best of Seller's knowledge, there are no inoperative wells on the Property except disclosed on the Well Disclosure Statement provided Buyer. Seller has disclosed to Buyer all environmental reports and studies with respect to the Property of which Seller is aware. As used in this Agreement, "Hazardous Substance" means any hazardous or toxic substance, waste or contaminant including, without limitation, asbestos and polychlorinated biphenyl's ("PCBs") and any other substance, waste, mixture, compound odor or emission, declared or designated hazardous or toxic by federal, state or local laws, rules or regulations.

Seller has not received any written notice from any federal, state, county or local authority having jurisdiction over the Property of any violation of any law, regulation, ordinance, code or order affecting the Property.

AFTER Acceptable Inspection property to be taken
IN AS IS Condition —

**FINANCING ADDENDUM
CONVENTIONAL OR PRIVATELY
INSURED CONVENTIONAL MORTGAGE**

This form approved by the Minnesota Association of REALTORS, which disclaims any liability arising out of use or misuse of this form.

© 1998, Minnesota Association of REALTORS, Edina, MN
1. Date APRIL 9, 2001
2. Page 1

3. Addendum to Purchase Agreement between parties dated, April 9, 2001 pertaining to the purchase and
4. sale of the property at 12345 PORTLAND AVE SE BURNVILLE MN
5. Buyer will apply for and secure at Buyer's expense CONVENTIONAL PRIVATELY INSURED CONVENTIONAL
6. Either mortgage in the amount stated in the Purchase Agreement (circle one) amortized monthly over a period of
7. 30 years with an initial mortgage interest rate of no more than MARKET percent per annum.
8. not more than 30 years with an initial mortgage interest rate of no more than MARKET percent per annum.
9. MORTGAGE APPLICATION: The mortgage application IS TO BE MADE WITHIN FIVE BUSINESS DAYS after
10. the acceptance of this Purchase Agreement. Buyer agrees to use best efforts to secure a commitment for such
11. financing and to execute all documents required to consummate said financing. If Buyer cannot secure a commitment for
12. such mortgage, this agreement shall become null and void and earnest money paid by Buyer herein shall be refunded to
13. Buyer; Buyer and Seller agree to sign a Cancellation of Purchase Agreement.
14. PRIVATE MORTGAGE INSURANCE (PMI): PMI may be required by the lending institution. Buyer agrees to pay all subsequent
15. year's mortgage insurance premiums as required by the lending institution. The said mortgage insurance premium will
16. increase the mortgage amount unless paid in cash at closing.
17. DISCOUNT POINTS: Mortgage discount points ("Points") not to exceed % of the mortgage amount including PMI, if
18. added to mortgage, shall be paid as follows:
19. paid by Buyer.
20. paid by Seller.
21. If the Points charged by the lender are less than the Points agreed to on line #17: (initial option 1, 2 or 3)
22. 1 The Points shall be charged first to the Seller and the balance to the Buyer.
23. Buyer Seller If the Buyer is not contributing towards the Points and the Points are less than agreed to on Line #20, then:
24. (initial option A or B)
25. 1 A. Seller shall pay total amount agreed to in line #20 and Buyer may use it at their discretion
26. Buyer Seller towards Points, buy-down fees, or costs of closing.
27. 1 B. Seller shall pay only Points
28. Buyer Seller
29. 1 2. The Points shall be charged first to the Buyer and the balance to the Seller.
30. Buyer Seller
31. 3. The Points shall be paid proportionately by both Seller and Buyer as agreed on lines #17-20 above.
32. LOCKING/FLOATING OF MORTGAGE INTEREST RATE ("RATE") AND POINTS: Seller and Buyer agree the Rate and
33. Points shall be LOCKED / / on the date of application. If the Rate and Points are to be floated, it shall be the sole
34. discretion of SELLER / BUYER to lock in the Rate and Points. If the Seller has sole discretion to lock Rate and Points,
35. Buyer agrees to sign lender's lock-in documents immediately upon notification from Seller.
36. LENDER COMMITMENT WORK ORDERS: Nothing in this Purchase Agreement shall be construed as a warranty that the
37. Seller will make repairs required by the Lender commitment. However, the Seller agrees to pay up to \$ N/A
38. to make repairs as required by the Lender commitment. If the Lender commitment is subject to any work orders for which the
39. cost of making said repairs shall exceed this amount, the Seller shall have the following options:
40. (A) Making the necessary repairs; or
41. (B) Negotiating the cost of making said repairs with the Buyer; or
42. (C) Declaring the Purchase Agreement null and void and earnest money paid shall be refunded to the Buyer;
43. Buyer and Seller agree to sign a Cancellation of the Purchase Agreement, unless the Buyer provides for payment of the
44. cost of said repairs or escrow amounts related thereto above the amount specified on line 35 of this Addendum.
45. OTHER:

NOTE: Do not exceed maximum Seller contribution allowed by lender.

44. Joseph A. Burnett 4/16/01 4-9-2001

(Seller) (Date) (Buyer) (Date)

45.

(Seller) (Date) (Buyer) (Date)

THIS IS A LEGALLY BINDING CONTRACT BETWEEN BUYERS AND SELLERS.
IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.
Independently Owned And Operated By NRT, Incorporated.

3. Addendum to Purchase Agreement between parties dated April 9, 2001 pertaining to the purchase

4. and sale of the property at 12345 Portland Ave So Burnsville, MN

1) 5. Seller Shall have the option to Lease Back
6. Between 5000 to 7000 sq ft of Building
7. As Agreed For \$18.00 Gross per Square Foot
8. For a period of 24 months prepaid at Closing
9. With an option to Extend for Another 3 yrs.
10. With CPI (Consumer Price Index) Increases-
11. option to be for 15 days from Acceptance,

2) 13. Portland Building Acquisition LLC to have
14. An option to Lease Between 15,000 to 20,000 sq ft
15. for 5 yrs with 2 five yr options to extend
16. at agreeable rates- option to be for
17. 30 days from Acceptance by Bankruptcy
18. Judge

21. Buyer shall allow Seller to hold over, for 60 days following the closing date, that room in
22. the property that houses Seller's main computers. The "Computer Room" is a space
23. about 12 feet by 36 feet. Buyer shall provide Seller with full access and utility services,
24. as are currently in place, throughout the 60 day holdover period.

35. _____ (Seller) _____ (Date) _____ (Buyer) _____ (Date)
36. _____ (Seller) _____ (Date) _____ (Buyer) _____ (Date)

11:52:31 Tue Sep 14, 2004

TRX 5JD
SS\$R34

CIVIL AUTOMATED TRACKING SYSTEM
SELECT JUDGMENT DEBTOR

09/14/04
11:52:08

SELECT: _____ SEARCH NAME: SHIBER, D _____ I/O: I

JUDGMENTS ENTERED AFTER: 9 15 2001

	DEBTOR NAME / ADDRESS	AMOUNT	STATUS	CASE NUMBER
001	SHIBER, DARYL 6629 LYNWOOD BLVD, RICHFIELD, MN CREDITOR: BURNET TITLE INC	1,020.00	UNSATISFIED	TJ 02-010969 ENTERED: 04 22 2002 DOCKETED: 07 02 2002
002	SHIBER, DARYL 6629 LYNWOOD BLVD, RICHFIELD, MN CREDITOR: ERICKSON, JAMES, C	62,351.00	FULL SAT	CJ 03-004719 ENTERED: 03 27 2003 DOCKETED: 03 27 2003
003	SHIBER, DARYL, H 6629 LYNWOOD BLVD, RICHFIELD, MN CREDITOR: CAPITAL ONE BANK	4,125.71	UNSATISFIED	DJ 02-011859 ENTERED: 07 19 2002 DOCKETED: 07 19 2002
004	SHIBER, DARYL, H 6629 LYNWOOD BLVD, RICHFIELD, MN CREDITOR: BERN, BARBARA, J	90,000.00	UNSATISFIED	CT 01-018070 ENTERED: 08 14 2002 DOCKETED: 09 17 2002

** BEGIN PHONETIC NAME SEARCH **

NEXT TRX: _____ CASE #: _____

** MORE **

Ex. C

TRX 5JD
SS\$R34CIVIL AUTOMATED TRACKING SYSTEM
SELECT JUDGMENT DEBTOR09/14/04
11:50:48

SELECT: _____ SEARCH NAME: SHIBER, D _____ I/O: I

JUDGMENTS ENTERED AFTER: 9 15 1994

	DEBTOR NAME / ADDRESS	AMOUNT	STATUS	CASE NUMBER
001	SHIBER, DARYL 1204 SUMMIT OAK DR, BURNSVILLE, MN CREDITOR: KOLCZ, FRANK, J	6,261.78	PARTIAL SAT	CT 94-003898 ENTERED: 10 10 1995 DOCKETED: 10 10 1995
002	SHIBER, DARYL 8650 LYNDALE AVENUE SOUTH, BLOOMINGTON, MN CREDITOR: LARKIN HOFFMAN DALY & LIND	54,738.39	PARTIAL SAT	CJ 96-018648 ENTERED: 03 14 1997 DOCKETED: 03 14 1997
003	SHIBER, DARYL 6629 LYNWOOD BOULEVARD, RICHFIELD, MN CREDITOR: VAUGHT, MARK	4,435.00	UNSATISFIED	DJ 99-016890 ENTERED: 12 10 1999 DOCKETED: 12 10 1999
004	SHIBER, DARYL 6629 LYNWOOD BLVD, RICHFIELD, MN CREDITOR: EPSTEIN, PHILIP, W	395.00	FULL SAT	TJ 01-015659 ENTERED: 08 21 2001 DOCKETED: 10 25 2001
005	SHIBER, DARYL 6629 LYNWOOD BLVD, RICHFIELD, MN CREDITOR: BURNET TITLE INC	1,020.00	UNSATISFIED	TJ 02-010969 ENTERED: 04 22 2002 DOCKETED: 07 02 2002

NEXT TRX: _____ CASE #: _____

** MORE **

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shown on
first page

TRX 5JD
SS\$R34CIVIL AUTOMATED TRACKING SYSTEM
SELECT JUDGMENT DEBTOR09/14/04
11:53:52

SELECT: _____ SEARCH NAME: SHIBER, K _____ I/O: I

JUDGMENTS ENTERED AFTER: 1 24 1995

	DEBTOR NAME / ADDRESS	AMOUNT	STATUS	CASE NUMBER
001	SHIBER, KIMBERLY 6629 LYNWOOD BLVD, RICHFIELD, MN CREDITOR: WRIGHT HENNEPIN CO-OP	580.47	UNSATISFIED	TJ 99-018242 ENTERED: 07 28 1999 DOCKETED: 01 03 2000
002	SHIBER, KIMBERLY 6629 LYNWOOD BLVD, RICHFIELD, MN CREDITOR: BURNET TITLE INC	1,020.00	UNSATISFIED	TJ 02-010969 ENTERED: 04 22 2002 DOCKETED: 07 02 2002
003	SHIBER, KIMBERLY 6629 LYNNWOOD BLVD, RICHFIELD, MN CREDITOR: ERICKSON, JAMES, C	62,351.00	FULL SAT	CJ 03-004719 ENTERED: 03 27 2003 DOCKETED: 03 27 2003
004	SHIBER, KIMBERLY, G 6629 LYNWOOD BLVD, RICHFIELD, MN CREDITOR: METRO GEM INC	77,527.09	FULL SAT	CT 01-014446 ENTERED: 03 28 2002 DOCKETED: 03 28 2002

** BEGIN PHONETIC NAME SEARCH **

NEXT TRX: _____ CASE #: _____

** MORE **

Ex. D

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

SENDMYGIFT.COM, Inc.,
Debtor.

Bky. No. 00-35021 (GFK)
Chapter 11

SENDMYGIFT.COM, Inc.,
Plaintiff,
v.

Adv. No. 04-3035

Daryl A. Shiber, Kimberly G. Shiber,
DHS Corporation, and K.G.S., LLC
Defendants.

AFFIDAVIT OF
JOSEPH BURNETT

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Joseph Burnett, being on oath duly sworn, deposes and says:

1. I am president of plaintiff corporation, SENDMYGIFT.COM, Inc. I am familiar with the matters herein stated by virtue of my participation in the events described and my review of and familiarity with Plaintiff's records.

2. Defendants Daryl A. Shiber and Kimberly G. Shiber are husband and wife.

3. Defendant K.G.S., LLC is a Minnesota limited liability company, of which Kimberly G. Shiber is one of two owners. K.G.S., LLC is controlled by Daryl A. Shiber.

4. Defendant DHS Corporation is a corporation controlled by Daryl Shiber. His wife, Kimberly Shiber, is listed as the registered agent on the records of the Minnesota Secretary of State.

5. On May 31, 2001, K.G.S., LLC purchased an office building at 12345 Portland Avenue in Burnsville, Minnesota [the "Property"] from plaintiff for \$2.4 million.

6. As part of the financing for the transaction, K.G.S., LLC assumed plaintiff's mortgage in the original amount of \$1,125,000 on the Property with Premier Bank [the "Mortgage"]. Mr. Shiber agreed to refinance the Mortgage by December 1, 2001.

7. After the closing of the transaction, plaintiff remained liable with K.G.S., LLC on the Mortgage.

8. K.G.S., LLC did not refinance the Mortgage by December 1, 2001.

9. From December of 2001 through March of 2002, K.G.S., LLC was delinquent, or about to become delinquent, in its monthly payments owing on the Mortgage to Premier Bank.

10. From my conversations with Mr. Shiber, and with Mr. Ruether, president of Premier Bank, I believed that the Mortgage payments needed to be kept current in order for K.G.S., LLC to refinance the property so that plaintiff would be released from further liability on the Mortgage.

11. In order to bring K.G.S., LLC's Mortgage current with Premier Bank and so to avoid default on the Mortgage, I gave three checks to Mr. Shiber, drawn on Plaintiff's bank account. I made the checks payable to the parties, as Mr. Shiber directed me. The first check is dated December 19, 2001 and payable to D.H.S. Corporation in the amount of \$19,000. The second check is dated January 9, 2002 and payable to Darrel Schieber in the amount of \$19,000. The third check is dated March 1, 2002 and payable to Kim Shiber in the amount of \$15,000.

12. Defendants cashed these checks.

13. Mr. Shiber agreed to repay plaintiff these loans upon the refinance of the Mortgage.

14. K.G.S., LLC refinanced the Mortgage not long after March 1, 2002, but did not repay plaintiff.

15. On information and belief, K.G.S., LLC transferred the Property to yet another entity controlled by Mr. Shiber, shortly after he refinanced the Mortgage.

16. Besides his agreement to bring the Mortgage current, Mr. Shiber also agreed to do a deal with SENDMYGIFT.COM, Inc. in which SENDMYGIFT.COM, Inc. would use its internet software platform to sell merchandise from a closed pawn shop in St. Paul owned by Mr. Shiber. Mr. Shiber promised that SENDMYGIFT.COM, Inc. would get 50% of the profit from the sale of the inventory, and would get an ownership interest in the pawn shop. To make some documentation of this agreement, I wrote on the bottom of the first check: "St. Paul Pawn Inventory Purchase Investment + As Per 12/19/01 Agreement."

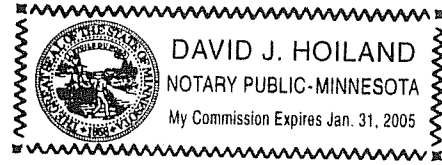
17. I later learned that Mr. Shiber did not even own the St. Paul pawn shop, and that he may be restricted from owning any interest in pawn shops in St. Paul. So, nothing ever came of this agreement to have SENDMYGIFT.COM, Inc. sell his pawn shop inventory.

18. I met with Mr. Shiber many times to demand repayment of the \$53,000 of loaned funds. Mr. Shiber admitted owing the debt, but has not paid back these loans.

Joseph A. Burnett
Joseph Burnett

Subscribed and sworn to before me
this 16th day of September, 2004.

David J. Hoiland
Notary Public



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

SENDMYGIFT.COM, Inc.,
Debtor.

Bky. No. 00-35021 (GFK)
Chapter 11

SENDMYGIFT.COM, Inc.,
Plaintiff,

Adv. No. 04-3035

v.

Daryl A. Shiber, Kimberly G. Shiber,
DHS Corporation, and K.G.S., LLC
Defendants.

**ORDER GRANTING
PLAINTIFF'S MOTION
FOR PARTIAL
SUMMARY JUDGMENT**

This matter came on for hearing before the undersigned on September 28, 2004 pursuant to plaintiff's Motion for Partial Summary Judgment. Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED:

Plaintiff's Motion for Partial Summary Judgment is granted. Judgment shall be entered against Daryl A. Shiber, Kimberly G. Shiber and DHS Corporation jointly and severally for \$53,000 plus statutory interest in the amount of \$7,950.00 plus costs of \$150.00 for a total of \$61,100.

Let Judgment be entered accordingly.

Dated: September ___, 2004

BY THE COURT

Gregory F. Kishel
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:
SENDMYGIFT.COM Inc.

BKY NO: 00-3-5021 GFK
Chapter 11

Debtor.

SENDMYGIFT.COM, Inc.

ADV NO: 04-3035

Plaintiff,

v.

Daryl A. Shiber, Kimberly G. Shiber,
DHS Corporation and K.G.S., LLC,

Defendants.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the office of David Jon Hoiland, Attorney at Law, and is a person of such age and discretion as to be competent to serve papers. That on September 17, 2004, she served a true and correct copy of the following documents:

- Notice of Motion and Motion for Partial Summary Judgment;
- Memorandum in Support of Motion for Partial Summary Judgment;
- Affidavit of David Hoiland in Support of Motion for Partial Summary Judgment;
- Affidavit of Joseph Burnett; and
- Order Granting Plaintiff's Motion for Partial Summary Judgment

On the parties listed below at their last known addresses:

John F. Cameron, Esq.
Cameron Law Office
4100 Multifoods Tower
33 South Sixth Street
Minneapolis, MN 55402

Sarah Wencil, Esq.
Office of U. S. Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55402

By messenger/personal service.

I swear under penalty of perjury, that the foregoing is true and correct.

/e/Laura L. Jordan
Laura L. Jordan